



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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New York, New York 10278*

June 21, 2024

By ECF

The Honorable Ronnie Abrams
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Zishe Abraham*, S1 20 Cr. 411 (RA)

Dear Judge Abrams:

The Government respectfully submits this letter in advance of the sentencing of Zishe Abraham on June 26, 2024. The defendant, along with his three co-defendants, participated in a multi-year scheme to defraud online retailer and e-commerce platform Amazon.com by inducing its automated systems to accept excessive shipments of goods it had never ordered, often at inflated prices it had not agreed to, or substituted different (inferior) products for those ordered. Often the defendant engages in several of deceptive practices at the same time. As set forth in the Presentence Investigation report (“PSR”) and in the plea agreement, the stipulated Guidelines range is 30 to 37 months’ imprisonment.¹ The Government respectfully submits that a sentence at the low-end of the stipulated Guidelines would be sufficient, but not greater than necessary, to reflect the goals of sentencing.

A. Offense Conduct

The defendant was charged, along with three co-defendants (three of his siblings), with participating in a wide-ranging scheme to defraud Amazon.com, the online retailer and e-commerce platform. (PSR ¶ 21). From at least 2017 through at least 2019, the defendant and his co-conspirators registered and opened third-party seller and vendor accounts on Amazon’s online platform to sell consumer goods. *Id.* The defendant and his co-conspirators defrauded Amazon in at least two different ways, which were frequently combined. First, the defendants engaged in overshipping (or “overage”) fraud: the defendants confirmed purchase orders from Amazon for

¹ As discussed below, this stipulated range is calculated under the revised November 1, 2023, edition of the United States Sentencing Guidelines.

specific goods (identified by a unique alphanumeric identified called an “ASIN”), in specific quantities, specific configurations, and at specific prices, and then shipped vastly greater quantities of the product. (PSR ¶ 25). Second, the defendants engaged in product substitution or unit manipulation: the defendants confirmed purchase orders from Amazon and then edited the product pages that corresponded to the items Amazon had agreed to purchase. The edits to the product page either substituted a different product altogether or edited the configuration of a product in a manner that drastically inflated the price (instead of a 10-pack for \$10, a single pack for \$10). The defendants then frequently overshipped the manipulated or substituted product.

Each defendant engaged in these deceptive practices to varying degrees. Zishe Abraham does not appear to have substituted the product that Amazon had ordered for an entirely different product of inferior value; rather, his misconduct chiefly consisted of overshipping, as well as overshipping combined with unit manipulation (editing the product page to change the product ordered from a multi-pack to a single item for the same price, and then overshipping the item at an inflated price). For instance, as reflected in the Annotated Victim Impact Statement,² Zishe Abraham, operating through his vendor account “ZLine” (vendor code ZLIOF), agreed to sell Amazon 48 units of Lenox Reciprocal Saw Blades, at a cost of \$90.00 for a 50-pack. After accepting this purchase order, Zishe Abraham altered the product page corresponding to this item to reflect \$90.00 for a single blade, and then overshipped 10,748 units and invoiced Amazon \$967,320.00. Similarly, the defendant agreed to sell Amazon 48 units each containing “12 x 12” package of Clif Bars—12 boxes, each containing 12 bars, for a total of 144 bars total—at a price of \$424.75. After accepting this purchase order, Zishe Abraham altered the product page corresponding to this item to a single unit containing just 12 bars, inflating the price by 1200%, and then shipped 564 units at this price, causing losses to Amazon of at least \$219,595.75. As set forth in the Government’s supplemental sentencing submission dated June 5, 2024 (ECF No. 189, at 4), Amazon’s losses from Just the handful of transactions attributed to Zishe Abraham set forth in the Victim Impact Statement resulted in losses to Amazon totaling \$2,390,067.19.³

The defendant and his co-defendants maintained an ongoing WhatsApp in which they discussed at length their “business” with Amazon and how best to defraud Amazon.⁴ They also discussed mutual acquaintances who engaged in similar types of fraud against Amazon. These communications make clear that the defendants knew their overshipping and unit substitution was wrong, that it violated the policies they had agreed to abide by when they agreed to do business with Amazon, and that Amazon would cease doing business with them if it discovered their fraudulent misconduct.

² Victim Losses with Attribution, attached hereto as Exhibit 6. Also filed as Exhibit 6 in Government Supplemental Sentencing Letter, ECF No. 189.

³ See Government Supplemental Sentencing Letter, ECF No. 189 at p. 4.

⁴ All citations to texts messages below are imaged excerpts from an Excel extraction produced under USAO_00006030. The defendants’ WhatsApp text group consists of a mix of text messages and lengthy voice memos, in English and Yiddish. As set forth below, where a column is populated with a .opus file, a translated transcription of the voice memo contained in the .opus file appears in the “text” field. Text in red reflects a draft translation and/or paraphrase of text in Yiddish. The numbers in the column on the left reflect a chronological order to the messages; certain messages have been paraphrased, as denoted by square parentheticals.

In a typical exchange, set forth below, Zishe Abraham discusses an acquaintance who got caught overshipping, and the extent of his own reliance on overshipping:

16	112049	18455707628@s.whatsapp.net Zisha Abraham	I just spoke to Zolly, they want to give him 6% more on returns alone not sure about his other stuff	3/7/2018 9:19:35 PM(UTC+0)	
19	112052	18455707628@s.whatsapp.net Zisha Abraham	Also he told me that they got very stricked on the overshipped.. they want now to return to him stuff they received and paid already.. a lot of stuff	3/7/2018 9:20:35 PM(UTC+0)	
21	112054	18455707628@s.whatsapp.net Zisha Abraham	So I guess he also overshipped like crazy even he keep saying he is not...	3/7/2018 9:20:52 PM(UTC+0)	
27	112060	18455707628@s.whatsapp.net Zisha Abraham	If they start shipping things back I'm in a really really bad shape no joke I just sent out serious shipments, all the money, the whole thing, credit, everything is sitting there, crazy	3/7/2018 9:25:09 PM(UTC+0)	24323a41-e611-4325-8e62-d104d37fc8d0.opus

Zishe Abraham also discussed and advised his co-defendants on how to stagger and delay overshipments in response to a particular purchase order (“PO”) so that Amazon would not detect it.

298	121477	18455707628@s.whatsapp.net Zisha Abraham	I have a part of the order ready	5/9/2018 2:15:33 PM(UTC+0)	
299	121478	18455707628@s.whatsapp.net Zisha Abraham	And the rest I don't have and don't want to send LTL, because I think they catch overshipping faster when it arrives at once	5/9/2018 2:15:33 PM(UTC+0)	

Zishe Abraham also advised his co-defendants that he would overship by sending in shipments multiple times, often under the same purchase order, relying on the fact that Amazon’s systems for vendors would not detect the overshipment:

969	128270	18455707628@s.whatsapp.net Zisha Abraham	Yes sure, I send in a month later some stuff	6/20/2018 2:51:57 PM(UTC+0)	00b371cd-f940-4040-9355- ddf8c4ba4245
970	128271	18454006839@s.whatsapp.net Heshl Abraham	my question is when I already sent it to them once already, they received it in their system, even more than the original PO can I still send even more units a month later? Is that also not a problem?	6/20/2018 2:52:10 PM(UTC+0)	caa36d33-0cc5-40d0- b67a-abf2642aa858.opus
971	128272	18455707628@s.whatsapp.net Zisha Abraham	So what, just send it in	6/20/2018 2:52:27 PM(UTC+0)	c5175f76-7aa0-48d3-9172- 7b6e89fea505
972	128273	18454006839@s.whatsapp.net Heshl Abraham	I understand, you send it in a month later as long as the ASN and ARN are created on time, if you have collect you can fight it this I understand, my question after that is I already sent in 1 batch, they already received all the units can I send in a month later even if they already received everything	6/20/2018 2:52:38 PM(UTC+0)	98ef0660-3d12-42f1-b42b- ce9b9c514852.opus
973	128274	18452320939@s.whatsapp.net Shmule L. Abraham	Answered already 6 times why you asking same thing again and again	6/20/2018 2:52:52 PM(UTC+0)	0b4f82e8-659d-4555-aab7- a0a5074465cc
974	128275	18455707628@s.whatsapp.net Zisha Abraham	Again yes you can send In and no issues,	6/20/2018 2:53:20 PM(UTC+0)	68f0ea44-dfcb-4419-a992- 7c3029fb65f2

When Zishe's co-defendant Yoel Abraham expressed his desire to undertake a massive fraudulent transaction against Amazon, Zishe opined on it could best be accomplished:

270	120108	18455179000@s.whatsapp.net Y.A.	I'm so in the mood to fuck Amazon	5/1/2018 4:42:44 AM(UTC+0)
271	120109	18455179000@s.whatsapp.net Y.A.	Did anyone try to overship and make a million profit a week? _x005F_xD83E__x005F_xDD13__x005F_xD83E__x005F_xDDD0_ [smiley and winking emoji]	5/1/2018 4:43:17 AM(UTC+0)
272	120110	18455179000@s.whatsapp.net Y.A.	Just asking _x005F_xD83D__x005F_xDC35_	5/1/2018 4:43:41 AM(UTC+0)
273	120111	18455179000@s.whatsapp.net Y.A.	_x005F_xD83E__x005F_xDD28_ [raised eyebrow emoji]	5/1/2018 4:43:47 AM(UTC+0)
274	120112	18455707628@s.whatsapp.net Zisha Abraham	Come in how to do it	5/1/2018 4:44:29 AM(UTC+0)
275	120113	18455179000@s.whatsapp.net Y.A.	I guess you just ship in, it's like לאקשען מווארפט אויפן וואנט אין מזעהט וואס קלעפט throwing noodles at the wall and seeing what sticks Some they approve and some goes into POD You just send in enough to make a profit _x005F_xD83D__x005F_xDE02__x005F_xD83D__x005F_xDE02__x005F_xD83E__x005F_xDD23__x005F_xD83E__x005F_xDD23__x005F_xD83E__x005F_xDD23__x005F_xD83E__x005F_xDD23_ [multiple laughing emojis]	5/1/2018 4:47:35 AM(UTC+0)

Zishe Abraham offered his own thoughts on how to accomplish such a big fraud:

289	120127	18455707628@s.whatsapp.net Zisha Abraham	I would say do it with 20-30 SKUS and send 5-10k of each so it not on one SKU and it don't alert it that fast... another thingy send it in little late (of course make ARN and asn) and then make net 32 so you get your money before they even realize that it's there	5/1/2018 4:57:44 AM(UTC+0)	P
290	120128	18452320939@s.whatsapp.net Shmule L. Abraham	Also true	5/1/2018 4:58:11 AM(UTC+0)	f946ba81-5b66-4748-9bda-992aa2a90a90
291	120129	18452320939@s.whatsapp.net Shmule L. Abraham	Good points	5/1/2018 4:58:20 AM(UTC+0)	

Zishe Abraham's messages to his co-defendants reflect his understanding that although Amazon tolerated inadvertent overshipping as a price of engaging in a high-volume business, there was a difference between occasional, inadvertent overshipping and "abusive" overshipping as practiced by the defendant, his co-defendant, and others.

562	123875	18455707628@s.whatsapp.net Zisha Abraham	Officially Zolly said that Nuti only overships things that are only over 5000 so it was very good that he overshipped anyway, but that doesn't make any sense now because he only had 1200 items, I don't know, sounds like he overshipped like crazy, anything whatever he was able to, I think he's made a few million from vendor, the guy abused it, not just abused hes probably the vendor who abused it the most, wow	5/25/2018 2:33:16 PM(UTC+0)	019a7857-9539-4db4-a70c-7e91e1e7bbcd.opus
563	123876	18455707628@s.whatsapp.net Zisha Abraham	whats he doing these days, hows he making money if he's only able to ship as much as they are requesting?	5/25/2018 2:33:30 PM(UTC+0)	1c60a3e1-ab64-416f-838d-f11d36ab0aa6.opus

The defendant's messages with his co-defendants also make clear his motivation for engaging in this scheme: to "make millions." To be sure, the defendant made clear that he would prefer to "make millions" without engaging in fraud, but that did not deter him from participating in the scheme to defraud Amazon for as long as possible to make as much money as possible.

949	127341	18455707628@s.whatsapp.net Zisha Abraham	Need to figure a way to make the millions without overshipping	6/13/2018 2:48:13 AM(UTC+0)	
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1082	128553	18455707628@s.whatsapp.net Zisha Abraham	I overshipe too, but what's the problem with one location, its not a problem at all, you need to make it so that it ships in multiple boxes, you are sending 200? 500? don't send all 500 in one box, split it so they don't realize whats happening so fast, but the overshipping is gonna stop, there is nothing to talk about with overshipping, we need to stop it, we need to start talking about all the different ways we wont overshipe while still making money, its so stupid this overshipping, we don't need to overshipe, then we can use all these apps like goflow and everything can go smooth its so stupid.	6/21/2018	6/21/2018 2:37:13 PM(UTC+0)	6262cfad-d50a-4419-9491-d42db76387f4.opus
1083	128554	18455707628@s.whatsapp.net Zisha Abraham	KolHaolam: BREAKING the Supreme Court says States can force online shoppers to pay sales tax	6/21/2018	6/21/2018 2:38:39 PM(UTC+0)	
1084	128555	18455707628@s.whatsapp.net Zisha Abraham	#dummy accounts #no sales tax	6/21/2018	6/21/2018 2:38:52	9f0580f5-ade8-4ee7-bdd1-db9945385b44

He and his co-defendants also contemplated trying to locate an insider at Amazon that they could corrupt, to release payments that were occasionally held up and to authorize new accounts when their old accounts were shut down:

1580	139988	18455179000@s.whatsapp.net Y.A.	But having an inside man in vendor, that could give you new vendor accounts, send in POs approve chargebacks, and release payments, that can make you billions legally!	10/8/2018 7:14:34 AM(UTC+0)	
1581	139989	18455707628@s.whatsapp.net Zisha Abraham	Also right, let's get one	10/8/2018 7:15:16 AM(UTC+0)	bf88e95e-1a4b-4bd4-beab-4448a8e66b0d
1582	139990	18455179000@s.whatsapp.net Y.A.	Amazon is a private government, we know how to make money with them, you just need inside people to cash out big	10/8/2018 7:16:45 AM(UTC+0)	
1583	139991	18455707628@s.whatsapp.net Zisha Abraham	Which amazon app would you like to hack?	10/8/2018 7:25:28 AM(UTC+0)	
1584	139992	18454006839@s.whatsapp.net Heshl Abraham	Do you even know what hacking means? And do you have the abilities to do it?	10/8/2018 7:26:47 AM(UTC+0)	19c1455b-4797-48e9-a8bf-e8433b691d51
1585	139993	18455707628@s.whatsapp.net Zisha Abraham	Hacking means that I have admin password to login to that app and then I can login to every user and see solid date.. #thats what I think _x005F_xD83E__x005F_xDD2A_	10/8/2018 7:27:38 AM(UTC+0)	
1586	139994	18455707628@s.whatsapp.net Zisha Abraham	I want to have the ability ☺	10/8/2018 7:27:46 AM(UTC+0)	
1587	139995	18455707628@s.whatsapp.net Zisha Abraham	Restock pro would be not a bad app to get full access no? _x005F_xD83E__x005F_xDD29_	10/8/2018 7:28:13 AM(UTC+0)	

Zishe Abraham was also quick with advice when Amazon detected misconduct:

1137	129246	18455179000@s.whatsapp.net Y.A.	PO: 5OZ5729H received XXXX units where as the PO has only 48 units, let us know how to proceed with item in hand	6/25/2018	6/25/2018 5:54:45 PM(UTC+0)	
1138	129247	18455179000@s.whatsapp.net Y.A.	what should i answer	6/25/2018	6/25/2018 5:55:01 PM(UTC+0)	d03052b7-3f77-46a2-9e0f-dc85981fb14f
1139	129248	18455707628@s.whatsapp.net Zisha Abraham	Hi, I apologize for the units shipped by mistake, looks like this is a warehouse mistake, I will make sure this is not happening again, if you need we can accept the return	6/25/2018	6/25/2018 5:57:07 PM(UTC+0)	
1140	129249	18455707628@s.whatsapp.net Zisha Abraham	I had it once and they didn't even asked to return it	6/25/2018	6/25/2018 5:57:22 PM(UTC+0)	
1141	129250	18455707628@s.whatsapp.net Zisha Abraham	You need to apologize hardly otherwise they can block pos right the way	6/25/2018	6/25/2018 5:57:37 PM(UTC+0)	
1142	129251	18455707628@s.whatsapp.net Zisha Abraham	How much was overshipped?	6/25/2018	6/25/2018 5:57:43 PM(UTC+0)	
1143	129252	18455179000@s.whatsapp.net Y.A.	alot	6/25/2018	6/25/2018 5:57:49 PM(UTC+0)	
1144	129253	18455707628@s.whatsapp.net Zisha Abraham	Also did they catch that after receiving or before? Before receiving you will need to pay for the return or pick it up	6/25/2018	6/25/2018 5:58:26 PM(UTC+0)	
1145	129254	18455179000@s.whatsapp.net Y.A.	they received almost everything and approved the Invoice already	6/25/2018	6/25/2018 5:59:27 PM(UTC+0)	

Ultimately, Zishe Abraham only stopped engaging in the fraud when Amazon realized the scheme was ongoing and shut down all his accounts that it could link together by IP addresses or other cookies.

2128	144294	18455707628@s.whatsapp.net Zisha Abraham	Hello, Your account has been closed due to violations of our Seller Policies and Seller Code of Conduct. I have provided our Seller Code of Conduct below for reference: Seller code of conduct Amazon enables you to reach hundreds of millions of customers. We strive to	11/5/2018 5:57:24 PM(UTC+0)	
2129	144295	18455707628@s.whatsapp.net Zisha Abraham	Second seller account which was linked to the second vendor account _x005F_xD83E__x005F_xDD26_19	11/5/2018 5:58:11 PM(UTC+0)	dac79892-ef42-423c-b376-9e74f0a17408

2238	144664	18454006839@s.whatsapp.net Heshl Abraham	[email from Amazon stating that they have terminated their business relationship with the vendor and all further communication should be directed to their attorney]	11/8/2018 1:47:05 AM(UTC+0)	48072168-7f3d-4377-885a-e95f503e8902.jpg
2239	144665	18454006839@s.whatsapp.net Heshl Abraham	Yes	11/8/2018 1:47:23 AM(UTC+0)	f4e3038e-0440-49ea-8a1b-59ec54ef72a8
2240	144666	18455179000@s.whatsapp.net Y.A.	Interesting I didn't get any email like that	11/8/2018 1:49:22 AM(UTC+0)	
2241	144667	18454006839@s.whatsapp.net Heshl Abraham	Maybe because you didn't had any open cases	11/8/2018 1:50:03 AM(UTC+0)	205f2f26-8273-4c29-b055-472e83855cdd
2242	144668	18454006839@s.whatsapp.net Heshl Abraham	They can go jump from the bridge they not getting back even a penny, and will still have plenty of relationship with Amazon in the near future _x005F_xD83E__x005F_xDD23_	11/8/2018 1:51:56 AM(UTC+0)	
2243	144669	18452320939@s.whatsapp.net Shmule L. Abraham	You didn't had any open cases	11/8/2018 1:52:06 AM(UTC+0)	7d0fa037-84d9-4b4d-a675-89c355a13e08
2244	144670	18452320939@s.whatsapp.net Shmule L. Abraham	Exactly	11/8/2018 1:52:14 AM(UTC+0)	b33e3ec6-ace4-47f7-9b48-63524953bed6
2245	144671	18454006839@s.whatsapp.net Heshl Abraham	Need someone to hack the lawyers emails and computers and wipe them clean out	11/8/2018 2:13:30 AM(UTC+0)	
2246	144672	18455707628@s.whatsapp.net Zisha Abraham	Let's do this	11/8/2018 2:38:54 AM(UTC+0)	ee4a5bc8-5716-4c27-a329-85faa878721c

Even though Amazon had detected their misconduct, and attempted to cease doing business with them, Zishe and his co-defendants were undeterred.

1863	143803	18455179000@s.whatsapp.net Y.A.	This shit is massed up, looks like will have to build a legit business	11/1/2018	11/1/2018 3:47:22 PM(UTC+0)	
1864	143804	18455707628@s.whatsapp.net Zisha Abraham	It's just because we need new accounts, old accounts still going on like never before, it's probably a question of time till they will get to everyone We took it to the max	11/1/2018	11/1/2018 3:50:52 PM(UTC+0)	
1865	143805	18455707628@s.whatsapp.net Zisha Abraham	And yes we need to build legit business!	11/1/2018	11/1/2018 3:51:14 PM(UTC+0)	
1866	143806	18455179000@s.whatsapp.net Y.A.	The truth is I'm not sure they will return,	11/1/2018	11/1/2018 3:51:52 PM(UTC+0)	
1867	143807	18455179000@s.whatsapp.net Y.A.	Open account under dummy names and they can go look for no one	11/1/2018	11/1/2018 3:52:17 PM(UTC+0)	
1868	143808	18455707628@s.whatsapp.net Zisha Abraham	Yup need to do that.	11/1/2018	11/1/2018 3:52:34 PM(UTC+0)	51c65e29-81b3-459a-9db3-f0e15c2f0305
1870	143810	18455707628@s.whatsapp.net Zisha Abraham	They closed yesterday my seller account that was linked to that vendor account _x005F_xD83E__x005F_xDD26_جڤ	11/1/2018	11/1/2018 3:53:08 PM(UTC+0)	
1871	143811	18455707628@s.whatsapp.net Zisha Abraham	Hello, Your account has been closed due to violations of our Seller Policies and Seller Code of Conduct. I have provided our Seller Code of Conduct below for reference:	11/1/2018	11/1/2018 3:53:31 PM(UTC+0)	726c077c-bbca-4fe2-9031-1955e5ab3d4f
1872	143812	18452320939@s.whatsapp.net Shmule L. Abraham	That's probably the only thing they can do	11/1/2018	11/1/2018 3:53:33 PM(UTC+0)	9f976b93-d657-4aad-a2c1-c9645f3b3926
1873	143813	18455179000@s.whatsapp.net Y.A.	Didn't you know it has to be separate	11/1/2018	11/1/2018 3:54:52 PM(UTC+0)	
1874	143814	18455179000@s.whatsapp.net Y.A.	They closed both my seller accounts in January because it was linked to vendor	11/1/2018	11/1/2018 3:55:18 PM(UTC+0)	
1875	143815	18455707628@s.whatsapp.net Zisha Abraham	When I start I didn't know I will overship etc. was same domain name same LLC same bank account all same!!!!	11/1/2018	11/1/2018 3:55:39 PM(UTC+0)	e40b027d-d4f1-4b08-bdec-188b5d87b4e5

1945	144001	18455179000@s.whatsapp.net Y.A.	Amazon didn't change today, they keep changing for the past 6 years that I'm doing it, so far we figured out some good shit, I'm not worried		11/2/2018 6:06:46 PM(UTC+0)	
1946	144002	18455707628@s.whatsapp.net Zisha Abraham	Totally right, we always figured out stuff, the only thing we didn't had till today is staying with so much inventory on hand! That's a very hard one! It would be able to be much worst thanks got suppliers worked with me and canceled or will return lots of inventory, and some I'll need to eat or try to move out...		11/2/2018 6:10:29 PM(UTC+0)	
1947	144003	18455707628@s.whatsapp.net Zisha Abraham	I never said for one minute that I'm out of Amazon, I said only that I'm looking at where the trend is going, I'm looking at what they are doing now, in vendor, that part I need to be more cautious now, if you have something else to figure out in Amazon then kudos to you, go do it, there are certainly more hacks and places to make money, I said that Nuti is smart for getting out of that part, but he's not out of Amazon, he still in Amazon, he's trying with his own private label, with others things, I don't know what else he's doing, but the idea is a smart idea, he cashed out, probably more than you cashed out, or not, he cashed out nicely in his vendor lifetime that he had, but hes moving on to the next Amazon thing, doesn't mean I need to leave Amazon and go to stocks or real estate, but he made a few dollars and he's open in what he's going to do, he can do other thing and get out of Amazon and build a more stable business, so you won't make as much money ok fine, be happy with what you did make and think about the future, like that you can make a stable business		11/2/2018 6:13:10 PM(UTC+0)	5daa79b2-2f9f-4823-856b-235dbf5945ac.opus

Simply put, the defendants schemed for years regarding the most effective ways to defraud Amazon, were under no illusion that their conduct was wrong, and nevertheless persisted.

B. Procedural History

The defendant was arrested on August 19, 2020, and charged by indictment with one count of conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349; one count of wire fraud (Count One), in violation of Title 18, United States Code, Section 1343 (Count Two), and one count of making financial transactions using criminal proceeds (Count Four), in violation of Title 18, United States Code, Section 1957.

C. Plea Agreement, PSR, and Applicable Guidelines Range

On October 10, 2023, the defendant pleaded guilty to a Superseding Information that charged him with one count of conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 371. (PSR ¶ 2). The Superseding Information also included a forfeiture allegation and the defendant executed a Consent Preliminary Order of Forfeiture.

As set forth in the plea agreement between the parties, at the time of the defendant's plea the November 1, 2021 Guidelines Manual applied to this case. (PSR ¶ 4(a)). The agreement, however, also contained calculations under the November 1, 2023 Guidelines Manual, in the event sentencing occurred after the plea. (PSR ¶ 4(l)). Under the November 1, 2023 Guidelines Manual, pursuant to U.S.S.G. § 2B1.1(a)(1), the base offense level is six. At the time of the plea, the parties agreed that there was a loss to the victim but that it reasonably could not been determined; accordingly, the gain to the defendant was used as an alternative measure of loss, pursuant to §2B1.1, Application Note 3(B). A 16-level increase is warranted, pursuant to U.S.S.G. § 2B1.1(b)(1)(J), because the defendant's gain was more than \$1,500,000, but less than \$3,500,000. A two-level increase is warranted, pursuant to 2B1.1(b)((10)(c) because the defendant intentionally engaged in or caused conduct constituting sophisticated means in connection with the offense. Pursuant to U.S.S.G. § 4C1.1, the offense level decreases by two levels because the defendant meets the relevant criteria of that section. Assuming the defendant demonstrates acceptance of responsibility, a three-level reduction is warranted, pursuant to U.S.S.G. §3E1.1(a) and (b), resulting in a total offense level of 19. The defendant has no prior criminal history, resulting in a Criminal History Category of I. Accordingly, the applicable Guidelines range is 30 to 37 months' imprisonment. (PSR ¶ 4(a)-(l)).

In connection with his guilty plea, the defendant also executed a consent preliminary order of forfeiture with respect to Count 1 of the Superseding Information and agreed to forfeit, pursuant to 18 U.S.C. 981(a)(1)(C) and 28 U.S.C. 2461(c): (i) a sum of money equal to \$967,696 in U.S. currency, representing the proceeds traceable to the commission of said offense; and (ii) all right, title and interest of the defendant in the following specific property: (1) all monies and funds held in JPMC bank account 822897281, in the name of the Silent Charitable Remainder Unitrust, Zishe Abraham Trustee; (2) up to \$500,000 held in JPMC bank account 363595858, in the name of List of Fire LLC; (3) up to \$500,000 held in JPMC bank account 765389551, in the name of Zisha Abraham or Zelda Abraham. As provided in the consent order, the amount reflected in the money judgment may be satisfied by the funds obtained from the specific property. The defendant also agreed to pay restitution in amount to be determined by the Court.

D. Discussion

1. Applicable Law

The Guidelines still provide important guidance to the Court following *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). “[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range,” which “should be the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 49 (2007). The Guidelines range is thus “the lodestar” that “‘anchor[s]’” the district court’s discretion. *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1345-46 (2016) (quoting *Peugh v. United States*, 133 S. Ct. 2072, 2087 (2013)).

After making the initial Guidelines calculation, a sentencing judge must consider the factors outlined in Title 18, United States Code, Section 3553(a): (1) “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1); (2) the four legitimate purposes of sentencing, as set forth below, *see id.* § 3553(a)(2); (3) “the kinds of sentences available,” *id.* § 3553(a)(3); (4) the Guidelines range itself, *see id.* § 3553(a)(4); (5) any relevant policy statement by the Sentencing Commission, *see id.* § 3553(a)(5); (6) “the need to avoid unwarranted sentence disparities among defendants,” *id.* § 3553(a)(6); and (7) “the need to provide restitution to any victims,” *id.* § 3553(a)(7). *See Gall*, 552 U.S. at 50 & n.6.

In determining the appropriate sentence, the statute directs judges to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing, which are:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2). To the extent that a district court imposes a sentence outside the range recommended by the Guidelines, it must “consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.” *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc) (quoting *Gall*, 552 U.S. at 50) (internal quotation marks omitted).

2. A Guidelines Sentence is Appropriate

The Government respectfully submits that a sentence at the low end of the Guidelines range of 30 to 37 months’ imprisonment would be fair and appropriate. The defendant seeks a sentence of probation—a downward departure of more than two years—despite building an entire business

based on the systematically defrauding another company, the very company that permitted him to create his own small business. A Guidelines sentence is necessary to address the seriousness of the defendant's crime, its effects on his victim, and to promote specific and general deterrence. Notwithstanding these aggravating factors, throughout the scheme the defendant consistently evinced a desire to build a legitimate business and stop committing fraud. Taken together, these considerations together warrant a sentence at the low-end of the Guidelines.

First, the scheme here was serious. It was brazen, sophisticated, and of long duration. The defendant built an entire business around fraud—hiring employees, developing software, and feverishly gathering information on Amazon's vendor and seller systems—for the sole purpose of bilking another business. As set forth in his communications with his co-defendants, Zishe Abraham devoted considerable time and effort, with his co-defendants, to testing and developing different ways to trick Amazon's systems in accepting and paying for products it had not agreed to pay for, and frequently at outrageous prices. Even worse, the defendants abused a victim that was providing them with the opportunity they purportedly most wanted: to open their own businesses and provide a good life for themselves and their families.

What is worse is that there is no justification for the defendant's conduct other than greed. The defendants were open amongst themselves that they could have operated their businesses legitimately and enjoyed a comfortable lifestyle, but that was not what they wanted. In the defendant's own words, they wanted to "make millions." The offense was not a momentary lapse of judgment or an act of desperation; it was a calculated effort to get rich quick by any means necessary.

Second, the significant losses caused by the offense reflects its seriousness and the need for adequate punishment to promote respect for the law: Amazon lost millions through the defendants' deceptive conduct by wildly overpaying for commonplace goods and the defendants' abuse of Amazon's systems led to substantial expenses on storage and destruction of, personnel hours to identify and root out the defendants' fraud and reconstruct Amazon's systems.

Third, an incarceratory sentence is necessary here to promote specific deterrence. To be sure, the defendant is a first-time offender. Nevertheless, the evidence is clear that his commitment to getting rich quick was sufficiently powerful that he persisted in the scheme even as Amazon shut his accounts down. The defendant received multiple warning signs and red flags that his conduct was fraudulent and illegal, and his response was to double down. Moreover, he was open to committing additional crimes in the service of keeping the scheme going: he expressed willingness to bribe an Amazon insider to ensure the continued operation of his accounts, as well as a desire to "hack" Amazon or its attorneys to ensure that Amazon would never be able to recover the money that he had effectively embezzled from the Company.

Fourth, a sentence within the Guidelines Range is necessary for general deterrence. The legislative history of 18 U.S.C. § 3553 demonstrates that "Congress viewed deterrence as 'particularly important in the area of white-collar crime.'" *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (citing S. Rep. No. 98-225, at 76 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3259); *see also United States v. Mueffelman*, 470 F.3d 33, 40 (1st Cir. 2006) (deterrence of white-collar crime is "of central concern to Congress"). General deterrence is an important

sentencing factor in fraud and white-collar cases because it is seen as effective. *Martin*, 455 F.3d at 1240 (“Because economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence.”) (quotation marks and citation omitted). A Guidelines sentence, even one at the low end, will signal to others who think that crimes against corporations—even those as deep-pocketed as Amazon—are inconsequential that their conduct will be met with serious punishment. This is a particularly relevant aim of sentencing here, where the defendants’ communications make clear that they had other acquaintances who engaged in similar fraudulent schemes against Amazon. A custodial sentence is required here precisely to ensure that others similarly situated—and whose have simply not yet been caught—are deterred from continuing their schemes.

Balanced against these considerations—and the chief reason for the Government’s recommendation of a sentence at the low-end of the Guidelines—is the defendant’s professed desire, expressed multiple times in communications to his co-defendants, to stop committing fraud and create an honest business. To be sure, he did not act on this professed desire. Among the defendants, however, he exhibited the greatest awareness of illegality of the scheme and persistently stated his desire to conduct a business free of fraud one day. These statements lead the Government to conclude that the defendant would be sufficiently deterred from re-offending by a shorter custodial sentence.

3. Restitution

On June 18, 2024, in connection with the sentencing of co-defendant Yoel Abraham, the Court requested additional information from the Government concerning amounts owed in restitution. The Government is currently preparing its response, which will address restitution owed by all defendants, and respectfully requests that the Court order restitution in an amount to be determined after these submissions to the Court have been made. To date, as set forth in the Government’s submission of June 5, 2024, the Government’s calculation of restitution attributed \$2,406,692 to Zishe Abraham. The latter figure reflects Amazon’s losses from unit manipulation for just the *five* transactions attributable to Zishe Abraham in the 48 samples set forth in Exhibit A to the Victim Impact Letter: \$2,390,067.19 for Zishe Abraham’s vendor accounts and apportioned counsel fees in connection with the criminal matter of \$16,625.⁵ It does not include the amounts claimed as a loss by Amazon on the 48 largest instances of “pure” overshipping.

The restitution figure reflects the fact that losses attributable to “pure” overshipping—overshipping in which there is no unit manipulation or product substitution—are difficult to calculate. Although the victim’s systems were abused and payments were issued for unwanted goods, Amazon did receive certain goods and was able to re-sell them in many instances. This sets losses from “pure overshipping” apart from losses caused by unit manipulation/product substitution combined with overshipping. In the latter instances, Amazon was induced to pay such wildly inflated prices that it is inconceivable that those losses could have been recuperated.

⁵ Government Supplemental Sentencing Letter, ECF No. 189 at p. 4. The defendant does not contest that restitution must include the victim’s attorney’s fees incurred in connection with the Government’s criminal investigation.

4. Forfeiture

As the Court is aware, at the time of his plea the defendant executed a consent preliminary order of forfeiture in the amount of \$967,696.

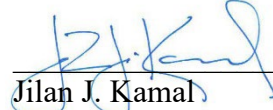
E. Conclusion

For the foregoing reasons, the Government respectfully submits that a sentence at the low end of the stipulated Guidelines range would be fair and appropriate in this case.

Respectfully submitted,

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cc: All counsel by ECF